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96TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPT. 96-
1156 Part II

NUCLEAR WASTE DISPOSAL ACT

AUGUST 27, 1980.—Ordered to be printed

Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

COMPLETED
ORIGINAL

REPORT

[To accompany H.R. 7418]

[Including cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 7418) to establish a research, development, and demonstration program for the disposal of radioactive wastes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Nuclear Waste Disposal Act".

FINDINGS AND PURPOSES

SEC. 2. (a) FINDINGS.—The Congress finds that—

(1) Federal efforts made during the past 30 years to devise a permanent solution to the problems of nuclear waste disposal have not been adequate.

(2) The accumulation of nuclear waste from military activities, commercial reactors, and activities related to medical research, diagnosis, and treatment, as well as nuclear waste from other sources, has created a national problem which can be resolved only with the cooperation of the Federal Government and the States.

(3) The construction and operation of repositories for the disposal of high-level waste and spent fuel is a Federal responsibility and is in the national interest.

(4) The disposal of nuclear waste is a potentially hazardous operation which should be subject to appropriate oversight by affected State and local governments.

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(5) Public participation in planning and development of repositories for the disposal of nuclear waste is essential in order to promote confidence among the public with regard to the safety of disposal of nuclear waste.

(6) The implementation of a waste repository development program in accordance with this Act would provide reasonable assurance that methods of safe permanent disposal of high-level waste can be available when such methods are needed.

(7) By order issued December 23, 1977, the Nuclear Regulatory Commission terminated the proceedings related to the Generic Environmental Statement on Mixed Oxide Fuel (GESMO) in response to concerns that the continuation of such proceedings would negatively affect the nonproliferation initiatives of the Federal Government. As a consequence, the option to reprocess spent nuclear fuel is presently foreclosed to the nuclear industry. In recognition of the need to move forward with a waste management plan, it is necessary at this time to do preliminary planning on the basis of geologic disposal of spent fuel. The Congress recognizes, however, that this policy with regard to reprocessing may change, and the Congress hereby encourages the Secretary to take this possibility into account in subsequent planning with regard to the disposal of nuclear wastes.

(b) PURPOSE.—It is the purpose of this Act to—

(1) set forth the responsibilities of the Secretary of Energy, the Nuclear Regulatory Commission, the Congress, and the President with respect to the development and construction of licensed repositories for the permanent disposal of nuclear high-level waste and spent fuel, including the dates by which certain activities must be carried out; and

(2) provide for State participation in decisionmaking on waste repository site development and for Federal assistance for States impacted by repository construction or operation.

DEFINITIONS

SEC. 3. For purposes of this Act:

(1) The term "disposal" means the emplacement of radioactive waste with no foreseeable intent of recovery, whether or not such emplacement permits the recovery of such materials.

(2) The term "high-level waste" means (A) liquid wastes resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated wastes from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuel, and (B) solids into which such liquid wastes have been converted.

(3) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village, as defined in section 3 of the Alaska Native Claims Settlement Act (85 Stat. 688).

(4) The term "Indian reservation" means—

(A) the Indian reservations and dependent Indian communities referred to in clauses (a) and (b) of section 1151 of title 18, United States Code; and

(B) lands selected by Alaska Native villages or regional corporations under the provisions of the Alaska Native Claims Settlement Act.

(5) The term "Secretary" means the Secretary of Energy.

(6) The term "site characterization" means the program of exploration and research, both in the laboratory and in the field, undertaken to establish the geologic conditions and the ranges of those parameters of a particular site relevant to the procedures required under this Act. Site characterization includes borings, surface excavations, excavations of exploratory shafts, limited subsurface lateral excavations and borings, and in situ testing needed to determine the suitability of the site for a geologic repository, but does not include preliminary borings and geophysical testing needed to decide whether site characterization should be undertaken.

(7) The term "spent fuel" means that fuel that has been withdrawn from a nuclear reactor following irradiation and the constituent elements of which have not been separated by reprocessing.

(8) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(9) The term "State Review Board" means any Nuclear Waste Repository Impact Review Board that meets the requirements under section 6(a).

RESPONSIBILITIES OF THE SECRETARY OF ENERGY

SEC. 4. (a) SELECTION OF REPOSITORY SITES.—(1) The Secretary shall carry out a program to construct and operate licensed repositories for the permanent disposal of high-level waste and spent fuel. Under the program, the Secretary shall identify and recommend to the Congress at least four potential repository sites which the Secretary considers suitable for development as licensed repositories. Such sites shall be located, to the maximum extent practicable, in four different geologic media. Recommendations for the four sites shall be submitted to the Congress by December 31, 1985.

(2) Sites which shall be examined under this subsection shall include those consisting of the following geologic media: basalt, tuff, granite, bedded salt, domed salt, and such other media as the Secretary may consider suitable. No site shall be recommended to the Congress under paragraph (1) unless the Secretary considers such site potentially suitable for future use as a licensed repository for the disposal of high-level waste and spent fuel.

(3) After identification of the four initial potential repository sites under paragraph (1), the Secretary shall continue to conduct screening at other locations to determine the availability of additional potential repository sites in the geologic media described in paragraph (2).

(4) The recommendation of a repository site under this subsection shall not be considered to be a major Federal action under section 102(2)(C) of the National Environmental Policy Act of 1969.

(b) SITE SELECTION CRITERIA.—Not later than February 15, 1981, the Secretary shall, in consultation with the Council on Environmental Quality, the Environmental Protection Agency, the Nuclear Regulatory Commission, and the United States Geological Survey, issue guidelines for site qualification. Such guidelines shall include criteria for the elimination of sites from consideration for repository development, including criteria with respect to such factors as association of the sites with valuable natural resources, proximity to populations, hydrogeophysics, seismic activity, defense nuclear activities, and such other factors as the Secretary considers appropriate. The Secretary shall use these guidelines in screening sites for selection under subsection (a) for characterization for possible development into licensed repositories. The development of these guidelines shall be considered a preliminary decision-making activity and shall not be considered to be a major Federal action under 102(2)(C) of the National Environmental Policy Act of 1969.

(c) REPOSITORY SITE CHARACTERIZATION.—(1) Before proceeding to sink shafts at any repository site selected under subsection (a), the Secretary shall submit to the Nuclear Regulatory Commission for such site—

(A) an environmental assessment of nonradiological impacts of planned site characterization activities and a discussion of alternative procedures and any mitigating measures relating to such impacts; and

(B) a characterization plan which includes at least the following items—

(i) a description of the site to be characterized;

(ii) a description of the planned site characterization program, including the extent of planned excavations, plans for any on-site testing of radioactive or non-radioactive material, investigation activities which may affect the ability of the site to isolate wastes and spent fuel, and provisions to control any adverse, safety-related impacts from site characterization including appropriate quality assurance programs;

(iii) plans for decommissioning of the site if it is determined unsuitable for application for licensing as a permanent repository;

(iv) criteria and associated data used to arrive at candidate areas; and

(v) any other information required by the Nuclear Regulatory Commission prior to the sinking of shafts at potential repository sites; and

(C) proposals describing the possible form or packaging for the waste material and spent fuel which would be emplaced in the repository.

(2) In carrying out activities at each proposed repository site, the Secretary shall consult on a continual basis with the Nuclear Regulatory Commission. Opportunities shall be provided for participation by the public and the affected States with respect to such consultations.

(3) At proposed repository sites for which environmental assessments and site characterization plans have been submitted under this subsection, the Secretary shall conduct such tests as may be necessary to provide data sufficient to validate a license application and to comply with the National Environmental Policy Act of 1969, except that—

(A) the Secretary shall not use radioactive wastes for site characterization unless the Nuclear Regulatory Commission and the Secretary concur that such use is necessary to provide data for geologic repository licensing activities;

(B) if radioactive materials are placed in the site, the Secretary shall place the smallest quantity necessary to determine the suitability of the site for a repository;

(C) in no case shall tests at any site involve the use of an amount of high-level waste or spent fuel which contains more than the curie equivalent of 10 metric tons of spent fuel; and

(D) any radioactive wastes used or placed on the site shall be fully retrievable.

(4) The Secretary shall not continue characterization activities at any site if the Secretary determines that site to be unsuitable for eventual development as a licensed repository, unless the Secretary determines that continued activity would provide information which could requalify the site for possible licensing. If the Secretary makes any such determinations, the Secretary shall submit a report containing the reasons therefor to the Congress. If characterization activities are terminated at a site for any reason, the Secretary shall remove any nuclear waste or other radioactive materials at or in the site as promptly as practicable.

(d) RECOMMENDATION OF PERMANENT REPOSITORY SITES.—(1)(A) Not later than March 30, 1988, the Secretary shall submit to the President for his review under section 8(b) a recommendation of the site which the Secretary considers qualified for application for license as a permanent repository for high-level waste and spent fuel and which conforms to the criteria developed pursuant to subsection (b). After such date, the Secretary may submit to the President recommendations for other sites which the Secretary also considers suitable for such purpose. Together with any recommendation of a site under this paragraph, the Secretary shall submit to the President a report containing the following:

(i) A description of the proposed repository, including engineering plans for the facility.

(ii) A description of the waste form or packaging proposed for use at the repository.

(iii) A discussion of data, obtained in site characterization activities, relating to the safety of the repository site.

(iv) A final environmental impact statement for the site and the design of the repository as required under the National Environmental Policy Act of 1969 together with comments made concerning the environmental impact statement by the Department of the Interior, the Council on Environmental Quality, the Environmental Protection Agency, and the Nuclear Regulatory Commission.

(v) Preliminary comments of the Nuclear Regulatory Commission concerning the extent to which the at-depth site characterization analysis and the waste form proposal for the site seem to be sufficient for inclusion in any application to be submitted by the Department of Energy for licensing of the site as a permanent repository for high-level waste and spent fuel.

(vi) The views of any State Review Board, and any governing body of an Indian tribe, which is affected by such site, as determined by the Secretary, together with the Secretary's response to such views.

(vii) Such other information as the Secretary considers appropriate to provide a complete statement of the basis for the recommendation of the site for licensing as a repository for the disposal of high-level waste and spent fuel.

(B) If the approval of a site recommendation for the initial repository proposed as required under subparagraph (A) does not take effect as a result of the operation of section 8(b) or 8(c), the Secretary shall resubmit to the President under section 8(b), within one year after the disapproval of the recommendation, a recommendation of another site for an initial repository, together with a report as described under subparagraph (A).

(2) The Secretary shall submit an application for an authorization under the Atomic Energy Act of 1954 for the construction of a repository for high-level waste and spent fuel at any repository site recommended as qualified for application for license under paragraph (1) as soon as possible after the date on which the recommendation of the designation of such site is effective in accordance with section 8.

RESPONSIBILITIES OF THE NUCLEAR REGULATORY COMMISSION AND THE ENVIRONMENTAL PROTECTION AGENCY

SEC. 5. (a) PROMULGATION OF STANDARDS.—(1) Not later than June 30, 1981, the Nuclear Regulatory Commission shall, by rule, promulgate standards and requirements for the licensing and regulation of the disposal of high-level waste and spent fuel. Such standards and requirements shall be consistent with the applicable general standards promulgated by the Administrator of the Environmental Protection Agency under paragraph (2).

(2) As soon as practicable, but not later than January 31, 1981, the Administrator of the Environmental Protection Agency shall, by rule, promulgate standards and

requirements of general application pertaining to the licensing and regulation of the disposal of high-level waste and spent fuel. The Administrator shall consult with the Nuclear Regulatory Commission before promulgating any rule under this paragraph.

(b) STATUS REPORT FOR CONSTRUCTION PERMIT AUTHORIZATION—No later than 2 years after the date on which an application for a construction authorization is submitted under section 4(d)(2), the Nuclear Regulatory Commission shall submit a report to the Congress describing the proceedings undertaken through such date with regard to the authorization application submitted, including a description of—

(1) major unresolved safety issues, and the Secretary's explanation of design and operation plans for resolving such issues;

(2) matters of contention regarding the application;

(3) any Nuclear Regulatory Commission actions regarding the granting or denial of the authorization.

(c) DECISION REGARDING CONSTRUCTION AUTHORIZATION APPLICATION.—Not later than 4 years after the date the initial construction authorization application is submitted under section 4(d)(2), the Nuclear Regulatory Commission shall issue a final decision granting or denying such authorization, subject to such terms and conditions as may be required or permitted by law.

STATE PARTICIPATION

SEC. 6. (a) STATE REVIEW BOARDS.—(1) The provisions of this section shall be applicable only in the case of any Nuclear Waste Repository Impact Review Board that—

(A) has the composition and authorities described in this subsection;

(B) is established under State law by any State in which there is located a site recommended to the Congress by the Secretary under section 4(a) as a potential repository site for which a characterization study should be done, or recommended under section 4(d) as the site for a repository; and

(C) is determined by the Secretary to be established in accordance with this section.

(2) Each State Review Board referred to in paragraph (1) of this subsection shall be composed as determined by the State under State law, except that the following shall be provided for by such law:

(A) The general public, any affected Indian tribe, and affected local governments shall be represented by members on the Board.

(B) The State Review Board shall have the authority to—

(i) study and determine for purposes of carrying out the Board's functions under this Act the possible economic, environmental, and social impacts, and possible impacts on public health and safety, of a repository for the disposal of high-level waste and spent fuel;

(ii) draft proposals suggesting assistance which would be required to be provided by the Federal Government to remedy or lessen the impacts identified under clause (i); and

(iii) review the activities undertaken by Federal agencies with respect to possible repository sites within the State and, as appropriate, submit relevant suggestions with regard to such activities to the Congress or appropriate Federal agencies.

(C) The State Review Board shall hold meetings open to the public not less than once every 2 months, at which meetings the Board shall receive and to the extent practicable place on its agenda matters submitted by any Board members.

(b) PARTICIPATION IN REPOSITORY LICENSING DECISIONS.—Upon the submission to the President of the recommendation of a site for a repository for the disposal of high-level waste and spent fuel, the State Review Board of the State in which the site is located may, by majority vote of the membership of the Board, submit a petition to the Congress requesting that the Congress disapprove the site designation. A State Review Board may submit such a petition to the Congress not later than the 30th day after the date that the President approves the site recommendation under section 8(b) and submits the recommendation and report of the Secretary to the Congress. A petition shall be considered to be submitted to the Congress on the date of the transmittal of the petition to the Speaker of the House and the President Pro Tempore of the Senate. The petition shall be accompanied by a statement of reasons explaining why the petition should be granted.

(c) IMPACT ASSISTANCE.—(1) After the effective date of the approval of a permit for the construction of a repository for the disposal of high-level waste and spent fuel, the State Review Board of the affected State may submit to the Congress and to the Secretary, the Secretary of Transportation, or the head of any other appropriate Federal agency a detailed request for technical or economic assistance, in such form

or manner as the Board considers necessary, to mitigate the adverse impacts which will likely result from the construction or operation of the repository and to protect the health and safety of the public, together with such requests for legislative changes as the Board may consider necessary to mitigate such impacts. The Board shall submit with any such request a report which contains a detailed explanation of the anticipated adverse impacts from the repository and the reasons that the Board has requested the assistance or legislative changes specified in the report.

(2) The head of any Federal agency which has received, within the 90-day period beginning on the effective date of the construction permit for the repository, a request for assistance under paragraph (1) from a State Review Board, or from the governing body of an Indian tribe as provided under section 7, shall submit to the Congress an evaluation of such request, including evaluations pertaining to the cost of the proposals and their feasibility, together with such recommendations for alternative or supplementary assistance or legislative changes as the agency involved may consider to be appropriate. Such evaluation and recommendations shall be submitted to the Congress within 90 days after the date of the receipt of such a request.

(d) FUNDING.—(1) Subject to paragraph (2) and to the availability of funds to carry out this section, the Secretary shall provide to each State Review Board such funds as may be necessary to provide technical assistance to the Board and to permit the Board to carry out its duties, except that at least 10 percent of the total budget of the Board shall be provided by the State from non-Federal funds as its State share. Salaries and travel expenses which would ordinarily be incurred by any State or local government shall not be considered part of the budget of the Board and shall not be eligible for payment under this section.

(2) At the end of the one-year period beginning on the effective date of any operating license for a repository in a State, no Federal funds shall be made available under this subsection for the State Review Board of the State in which the repository is located, except for—

(A) such funds as may be necessary to support Board activities related to any other repository located in, or proposed to be located in, such State, and which has not been operating under license for more than one year; and

(B) such funds as may be necessary to support Board activities pursuant to agreements or contracts for assistance entered into under subsection (c) by the Board with the Federal Government before the end of such one-year period.

(e) PARTICIPATION IN LICENSING.—A State Review Board may participate in any licensing proceedings related to repositories for the disposal of high-level waste and spent fuel which are to be located in or adjacent to the State in which the Board is constituted.

(f) CONSULTATION.—(1) The Secretary, the Nuclear Regulatory Commission, and other agencies involved in the construction or operation of a waste repository in a State shall provide to the State Review Board of such State, and to the governing body of any Indian tribe on or adjacent to whose reservation the repository site is located, timely and complete information regarding determinations or plans made with respect to the siting, development, design, construction, operation, or regulation of the repository.

(2) In performing any study of an area within a State for the purpose of determining the suitability of the area for a repository and in subsequently developing and loading any repository within a State, the Secretary shall consult and cooperate with the State Review Board of the State in an effort to resolve the State's concerns regarding the public health and safety, environmental, economic, and social impacts of any such repository. In carrying out his duties under this Act, the Secretary shall take such concerns into account to the maximum extent feasible.

(3) As soon as possible after notifying a State of his decision to study an area within such State as a possible repository site, the Secretary shall seek to enter into a written agreement with the State Review Board of the State setting forth the procedures under which the requirements of paragraphs (1) and (2) shall be carried out. The written agreement shall provide for—

(A) the right of the State to study, determine, comment on, and make recommendations with regard to the possible health and safety, environmental, economic, and social impacts of any such repository;

(B) procedures, including specific time periods, for the Secretary to receive, consider, resolve, and act upon comments and recommendations made by the State Review Board, and

(C) procedures by which the Secretary and the State Review Board of such State may review or modify the agreement periodically.

(g) STUDY TO PROVIDE IMPACT ASSISTANCE TO LOCAL COMMUNITIES.—The Secretary shall conduct a study to determine the desireability of and possible methods of imposing fees on users of the repositories to make sums available for assistance to those communities impacted by licensed repositories for the disposal of high-level

waste and spent fuel. The study shall be designed to determine (1) the amount of any fee to be levied and the manner in which it would be assessed, (2) the process for determining which communities should be eligible to receive assistance with amounts generated by the fees, and (3) appropriate conditions which should be required with respect to the expenditure of assistance grants.

PARTICIPATION OF INDIAN TRIBES

SEC. 7. (a) AUTHORITIES OF TRIBAL GOVERNING BODIES.—The governing body of any Indian tribe on whose reservation is located a site recommended to the Congress by the Secretary under section 4(a) as a potential repository site for which a characterization study should be done, or recommended under section 4(d) as the site for a permanent repository, shall—

(1) have the same authorities provided to State Review Boards under section 6(a)(2)(B) and section 6(b); and

(2) be eligible for impact assistance as described in section 6(c)(1) in the same manner as State Review Boards.

(b) ASSISTANCE TO TRIBES.—Subject to the availability of funds to carry out this section, the Secretary shall provide to the governing body of each Indian tribe referred to in subsection (a) such funds as may be necessary to provide technical assistance to the tribe and to conduct the activities described under sections 6(a)(2)(B) and (C) and other similar activities related to the repository. At the end of the one-year period beginning on the effective date of any operating license for a repository located on a reservation, no Federal funds shall be made available under this subsection to the governing body of the Indian tribe on whose reservation the repository is located, except for—

(1) such funds as may be necessary to support activities related to any other repository located in, or proposed to be located in, such reservation, and which has not been operating under license for more than one year; and

(2) such funds as may be necessary to support activities pursuant to agreements or contracts for assistance entered into by the governing body of the Indian tribe with the Federal Government before the end of such one-year period.

(c) PARTICIPATION IN LICENSING.—The governing body of any Indian tribe shall be eligible to participate in any licensing proceedings related to repositories for the disposal of high-level waste and spent fuel which are to be located in or adjacent to the reservation of such tribe.

REVIEW OF REPOSITORY SITE SELECTION

SEC. 8. (a) POTENTIAL REPOSITORY SITES.—The designation by the Secretary, pursuant to a recommendation submitted to the Congress under section 4(a), of a site for characterization for possible disposal of high-level waste and spent fuel shall be effective unless, during the first period of 90 calendar days of continuous session of the Congress after the date of transmittal of the recommendation to the Congress, the Congress passes a concurrent resolution the matter after the resolving clause of which reads as follows: "The Congress disapproves the designation of the site at ———— for characterization for possible disposal of high-level waste and spent fuel."; (the blank space being filled with the geographic location of the proposed repository site).

(b) PRESIDENTIAL REVIEW OF SITES.—(1) The President shall review each recommendation for the location of a repository submitted by the Secretary under section 4(d), together with the accompanying report. Within 60 days after the submission of the recommendation and report, the President shall either approve the site and transmit such recommendation and report to the Congress, together with a statement recommending approval of the site for the repository, or shall disapprove the site and submit notice of the disapproval to the Secretary and to the Congress.

(2) The President may delay for not more than 6 months his decision under paragraph (1) for recommending approval or disapproval of a site upon determining that the information provided under the environmental impact statement or the characterization plan for the site is not sufficient to permit a decision within the 30 days referred to in paragraph (1).

(3) The designation of a site for a repository for high-level waste and spent fuel shall be effective at the end of the 30-day period beginning on the date that the President approves the site designation under paragraph (1) unless a State Review Board has submitted to the Congress a petition for disapproval under section 6(b) or the governing body of an Indian tribe has submitted such a petition under section 7.

If any such petition has been submitted the approval of the designation shall not be effective except as provided under subsection (c).

(c) CONGRESSIONAL REVIEW OF SITES.—(1) If the President submits to the Congress under subsection (b) a recommendation for approval of a site as a repository and either a State Review Board submits to the Congress a petition for disapproval under section 6(b) or the governing body of an Indian tribe submits to the Congress such a petition under section 7, the designation of such site for a repository for high-level waste and spent fuel shall be effective at the end of the first period of 90 calendar days of continuous session of the Congress after the date of transmittal of the recommendation of approval by the President to the Congress, unless, during such period, either House of the Congress passes a resolution the matter after the resolving clause of which reads as follows: "The ——— approves the petition submitted by ——— regarding the disapproval of the site at ——— for a repository for the disposal of high-level waste and spent fuel."; (the first blank space being filled with the designation of the appropriate House of the Congress; the second blank space being filled with the name of the State Review Board or Indian tribe governing body the petition of which is approved; the third blank space being filled with the geographic location of the proposed repository site). For purposes of paragraphs (3) through (7) of this subsection, the term "resolution" means a resolution described by this paragraph.

(2) Paragraphs (3) through (7) of this subsection are enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (1) of this subsection; and the provisions of such paragraphs supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(3) A resolution once introduced with respect to any site designation shall immediately be referred to a committee (and all resolutions with respect to the same site designation shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(4)(A) If the committee to which a resolution with respect to a site designation has been referred has not reported it at the end of 20 calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other resolution with respect to such site designation which has been referred to the committee.

(B) A motion of discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same site designation) and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same site designation.

(5)(A) When the committee has reported, or has been discharged from further consideration of, a resolution it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the resolution referred to in subparagraph (A) of this paragraph shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

(6)(A) Motions to postpone, made with respect to the discharge from committee, or the consideration of, a resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

(7) Notwithstanding any of the provisions of this subsection, if a House has approved a resolution with respect to a site designation, then it shall not be in order to consider in that House any other resolution with respect to the same such site designation.

(d) COMPUTATION OF DAYS.—For purposes of subsections (a) and (b) of this section—

(1) continuity of session of Congress is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 90-day period.

JUDICIAL REVIEW OF AGENCY ACTIONS

SEC. 9. Notwithstanding any other provision of law, the actions taken by the Department of Energy in designating any site for characterization, in designating an initial site as a repository for the disposal of high-level waste and spent fuel, or in characterizing a site, any actions taken by the Nuclear Regulatory Commission in granting or denying any construction permit application submitted to such a facility under section 4(d)(2) or any operating permit for such a facility, and any actions described under section 10 shall not be subject to judicial review except as provided in this section as follows:

(1) Claims regarding any such action may be brought not later than the 60th day following the date of such action, except that if a party shows that the party did not know of the action complained of, and a reasonable person acting in the circumstances would not have known, he may bring a claim alleging the invalidity of such action on the grounds stated above not later than the 60th day following the date of his acquiring actual or constructive knowledge of such action.

(2) A claim under paragraph (1) of this subsection shall be barred unless a complaint is filed before the expiration of such time limits in the United States Court of Appeals for the District of Columbia, acting as a special court. Such court shall have exclusive jurisdiction to determine such proceeding in accordance with the procedures hereinafter provided, and no other court of the United States or of any State shall have jurisdiction of any such claim.

(3) Any proceeding under paragraph (2) shall be assigned for hearing and completed at the earliest possible date, shall, to the greatest extent practicable, take precedence over all other matters pending on the docket of the court at that time, and shall be expedited in every way by such court, and such court shall render its decision relative to any claim within 90 days from the date such claim is brought unless such court determines that a longer period of time is required to satisfy requirements of the United States Constitution.

EXPEDITED AUTHORIZATIONS

SEC. 10. (a) ISSUANCE OF AUTHORIZATIONS.—(1) Subject to paragraph (2), to the extent that the taking of any action related to the characterization, construction, or initial operation of any site recommended under this Act and not disapproved under this Act for the disposal of high-level waste and spent fuel requires a certificate, right-of-way, permit, lease, or other authorization from a Federal officer or agency, such officer or agency shall issue or grant any such authorization at the earliest practicable date, to the extent permitted by the applicable provisions of law administered by such officer or agency. All actions of a Federal officer or agency with respect to consideration of applications or requests for the issuance or grant of any such authorization shall be expedited, and any such application or request shall take precedence over any similar applications or requests not related to such repositories.

(2) The requirements of paragraph (1) shall not be applicable in the case of any action related to any permit or other authorization issued or granted by, or requested from, the Nuclear Regulatory Commission.

(b) TERMS OF AUTHORIZATIONS.—(1) Any authorization issued or granted under subsection (a) shall include such terms and conditions as may be required by law, and may include terms and conditions permitted by law.

(2) Except as provided in the second sentence of this paragraph, nothing contained in this section shall be construed to impair the authority of any Federal officer or

agency to add to, amend, or abrogate any term or condition included in any authorization issued or granted under subsection (a) if such action is otherwise permitted under applicable laws administered by such officer or agency. In the case of any such action which is permitted but not required by law, the Federal officer or agency shall have no authority to take such action if the terms and conditions to be so added, or as so amended, would have the effect of terminating the characterization, construction, or initial operation of the potential or permanent repository which the authorization affects.

WASTE DISPOSAL FEES

SEC. 11. COLLECTION OF FEES.—(a)(1) The Secretary shall collect fees sufficient, as determined by rule promulgated by the Secretary, to offset all reasonable construction, operation, administrative, and other costs incurred by the Secretary in providing for the disposal, interim storage, and management of nuclear wastes and spent fuel. The fee shall be sufficient to offset all reasonable costs of waste treatment and encapsulation, repository development programs (including research and development costs), decontamination and decommissioning of repository facilities, any reasonable costs incurred by the Secretary in transporting nuclear wastes or spent fuel to storage or disposal sites, and the costs of providing adequate security protection for nuclear wastes or spent fuel (as determined by the Nuclear Regulatory Commission) during the period such nuclear wastes and spent fuel are transported to storage or disposal sites and during the period such wastes are stored at such sites. The research and development costs for which the fees shall be assessed shall include those incurred during all site specific investigations directly related to storage or disposal sites, and such other costs as the Secretary by rule determines to be directly related to management, storage, and disposal of nuclear wastes and spent fuel. From fees collected under this section, the Secretary shall reimburse State and local governments for any reasonable costs incurred by them in connection with, and during the period of, the transportation of nuclear wastes or spent fuel to disposal sites.

(2) The Secretary shall collect such fees from the persons or entities, whether public or private, who hold title to the nuclear wastes or spent fuel which is subject to disposal by the Secretary. The Secretary may require such fees to be paid in a lump sum or in such installments as the Secretary determines to be appropriate, and the fees levied under this subsection shall be subject to reassessment by the Secretary to the extent necessary to ensure that the total amount of the fees required to be paid reflects the actual reasonable costs incurred by the Secretary, as determined pursuant to paragraph (1) of this subsection.

(3) As used in this subsection, the term "nuclear wastes" means any radioactive material (other than spent fuel) for which interim storage or disposal is provided by the Secretary.

(b) USE OF FEES.—Section 111(h) of the Energy Reorganization Act of 1974 is amended—

(1) in paragraph (1), by striking out "and" after the semicolon,

(2) in paragraph (2), by striking out the period and inserting in lieu thereof "; and"; and

(3) by adding at the end the following:

"(3) revenues received by the Secretary of Energy under section 11(a) of the Nuclear Waste Disposal Act shall, when so specified in appropriation Acts, be retained and used for the specific purpose of offsetting costs incurred by the Secretary in providing for the disposal, interim storage, and management of nuclear wastes and spent fuel.".

AFFECT ON OTHER LAWS

SEC. 12. Nothing contained in this Act shall be construed to affect in any way the provisions of section 605 of Public Law 96-205 (94 Stat. 84; 48 U.S.C. 1491).

DISPOSAL OF SPENT FUEL

SEC. 13. Notwithstanding any other provision of this Act, any repository for the disposal of high-level waste and spent fuel which is designed and constructed under this Act shall be so designed and constructed that the spent fuel may be retrieved, during an appropriate period of operation of the facility, for any reasons pertaining to the public safety or for the purpose of permitting the recovery of the economically valuable contents of the spent fuel. The Secretary shall not dispose of spent fuel

in a manner which would not allow for its recovery in accordance with the preceding sentence unless specifically authorized to do so by the President.

TERMINATION OF AUTHORITY

SEC. 14. (a) The provisions of sections 9 and 10 shall cease to have effect at such time as the Secretary commences licensed operation of at least one repository for the permanent disposal of high-level waste and spent fuel.

(b) The provisions of this subtitle, other than sections 9 through 13, shall not have effect after December 31, 1999. Amend the title so as to read: "A bill to provide for repositories for the disposal of nuclear high-level waste and spent fuel, and for other purposes.".

PURPOSE OF THE BILL

H.R. 7418 provides for planning and programming for the development of facilities for the permanent disposal of radioactive wastes produced by commercial nuclear power reactors, other industrial facilities, and by national defense programs.

BACKGROUND

H.R. 7418 was introduced by Rep. Mike McCormack and referred exclusively to the Committee on Science and Technology, which reported the bill on July 2, 1980. (Rept. 96-1156, Part I). Most of the programmatic content of the bill had been reported by that Committee in actions on Department of Energy authorizing legislation for fiscal year 1981 (H.R. 6627 and H.R. 7449). The Interior Committee and the Committee on Interstate and Foreign Commerce sought sequential referral of H.R. 7418. A referral was made to both Committees.

The state of art in nuclear waste facility technology and the nature of this has resulted in a mixed jurisdiction regarding this legislation. With regard to facilities for permanent technology. With regard to facilities for permanent high level waste disposal in particular, certain activities have been recommended by the Science Committee to be conducted at sites and in deep geologic structures which are at the same time sites and structures which would be developed for use as operating permanent waste repositories. Conflicts arise between the exemption from licensing accorded to primarily research and development actitivies by Sec. 202 of the Energy Reorganization Act, and the important procedures and regulations for protection, data collection and construction activities at sites being developed for full-scale operation being promulgated by the Nuclear Regulatory Commission.

Such conflicts between licensing requirements and research and development exemptions do not arise when research activities are conducted at sites which are not part of a national bank of geologic locations being studied and preserved due to their apparent suitability for use as full-scale repositories. The Department of Energy is now conducting purely R. & D., unlicensed geologic repository research activities at the Near Surface Test Facility at Hanford, Washington and at the Nevada Nuclear Waste Storage Investigations Climax site. It would be possible to conduct tests such as those required by H.R. 7418 as reported by the Committee on Science and Technology also in a manner primarily oriented toward research and development. To do so, however, would result in either the threat of compromising or damaging the integrity of a

candidate full-scale site and therefore its potential use for licensed operation, or an unnecessary waste of Federal funds and a loss of some of the most useful data collection objectives, through at-depth activities at sites which were devoted to research and eliminated from candidacy for licensing.

The geologic site itself is one of the two most important barriers affording protection from the hazards of nuclear high level waste material after its disposal. The materials will be deposited from 1,500 to 2,000 feet underground in rock formations which have characteristics highly likely to prohibit the movement of the hazardous elements back into the biosphere. The form of the waste itself and engineered barriers will provide the first level of defense against release of radionuclides. But locating appropriate rock formations, and gathering data to adequately confirm their ability to provide protection over very long periods of time, are crucial elements of the repository development program.

The Department of Energy and its predecessors, the Atomic Energy Commission and the Energy Research and Development Administration, have been investigating sites for this use since at least the late 1950's. Attention was then focused for about 25 years on bedded salt deposits as the most likely rock formation type to serve as a host for high level wastes. Site investigation activities were accelerated in 1975, and in 1979 the President mandated that at least four rock types be fully investigated before one was selected for repository use. During these years, three sites have been recommended for development into repositories, and each has been eleminated due to technical or political problems. The state of site investigations is such that by 1983, if current predictions are not overly optimistic, three or possibly four site locations may be adequately understood to support a commitment to invest resources in them for thorough testing. About 6 sites may be available for nomination for testing by 1985.

In order for four of these sites to be set aside for work primarily or purely devoted to research and development, therefore, would mean a substantial period of delay before four additional sites could be located which would be suitable for development primarily for licensing and construction of operating full-scale respositories. In addition to time delay, devoting sites to primarily research activities would result in the commitment of substantial work and the collection of data which would have to be duplicated at sites being developed for use as licensed facilities. Such activities would include the construction of large shafts for equipment access and ventilation, construction of buildings and other facilities on the surface of the site, construction of facilities at repository depth, and the conduct of tests on the rock and related hydrologic systems, most of which would be chiefly of site-specific rather than generically applicable value. The potential loss of these resources and duplication of effort argue against setting aside a number of valuable sites for primarily research purposes.

To conduct research activities using sites ultimately to be developed for full-scale operations, however, could involve significant risks if such activities were conducted outside the procedures promulgated for site development by the Nuclear Regulatory Commission. The Commission has promulgated guidelines for the initial phase of excavation and data collection for the repository licensing

process which are intended to protect the site from being adversely impacted by the activities, to assure that appropriate tests are conducted and that all necessary data is collected, and to guard against the construction of facilities in a manner which would not conform to health and safety criteria and which could therefore adversely prejudice the site once formal licensing proceedings are initiated. Formal license application is required by the Commission prior to major construction of facilities at repository depth. Shaft excavation, testing and other preliminary work is expected to be conducted in a "site characterization" process in which the Commission provides guidelines and oversight for site development activities.

The necessity for developing licensed full-scale repositories is evident, and the desirability of accomplishing this feat, and resolving the attendant technical, political and institutional problems, should also be apparent. There are also certain objectives which could be accomplished by the construction of small-scale research and demonstration facilities. Mason Willrich, Director of International Relations for the Rockefeller Foundation, a noted national authority on waste management and adviser to national waste policy groups, noted these benefits and their limitations in "Radioactive Waste Management and Regulation":

> What are the technical benefits from operation of a pilot-scale plant before it is converted into a permanent repository? Experience will be gained in the handling of packaged solid waste; in the construction and operation of surface and underground facilities for receiving waste; in the emplacement of waste in the geologic formation; and in the measurement of the physical effects of waste emplacement caused by heat and radiation fields and mining stresses. It will, of course, be impossible to "demonstrate," with high assurance of validity, the capability of the repository to contain HL [high level] waste over the period for which it constitutes a potential radiological hazard. What can be demonstrated is the ability to receive and emplace solid waste in the repository * * *. It is possible that a demonstration will satisfy the public that the task of radioactive waste management can be dealt with safely. But if this occurs, the demonstration will have created the "illusion of certainty" (to quote Kenneth Boulding's phrase). Even those who have great confidence in the ability of our society to dispose of radioactive waste in a safe manner would not claim that the operation of a waste repository for a few years will, in itself, provide substantial evidence to support a conclusion that the waste is very unlikely to harm man or the environment thousands of years in the future.

Willrich further notes that a demonstration phase may have highly undesirable consequences:

> A third possibility is that there will be a public reaction against what is seen as an attempt to manipulate opinion with the demonstration. In this event, the obstacle which the readioactive waste problem poses to public acceptance of nuclear power will become even greater. Should we pro-

ceed on the basis of such an illusion of certainty in the public mind, even if the illusion is not shared by those in authority? Finally, it may be concluded from this discussion that it would be unwise to rely too heavily on the successful demonstration of pilot permanent waste repositories to obtain public acceptance of the waste management program.

Given the limited generic applicability of much of the data which would be collected at a repository site, the possibility of conducting most of such work at sites which would not be candidates for licensing, the perils of conducting demonstrations—both technical and non-technical—and the limited availability of adequate sites, it would seem inadvisable at this time for the Federal program for permanent isolation of high-level wastes to focus its resources on a primarily research and demonstration program involving construction at candidate full-scale sites. As they become available potential repository sites must be protected and managed primarily as such.

It is, however, necessary to proceed with research and testing as early licensing activities proceed. This complex interplay of research and commercialization goals, alongside a sensitive situation related to the credibility of the waste program, argue for a carefully structured cooperative approach in waste policy and management of all resources.

The Committee addressed H.R. 7418 with these considerations foremost in its priorities.

Committee Action

DEVELOPMENT OF PERMANENT REPOSITORIES

As reported by the Committee on Science and Technology, H.R. 7418 required the Secretary of Energy to nominate two geologic sites by 1981 and two more by 1983 for development into demonstration high-level waste disposal facilities. The sites were required to be selected on the basis of their regional location as well as on geologic criteria. Demonstration facilities were required to be mined at depths and constructed with methods which would permit subsequesnt development of the facilities into full-scale repositories. All activities conducted at the sites during the demonstration phase were noted to be exempted from licensing by the Nuclear Regulatory Commission. Detailed criteria were set out for the conduct of tests at the sites with solidified high-level wastes.

The Interior Committee amended the bill so that four sites would be nominated by 1985. The extension of that deadline would enable the Department to choose four sites from among five or six possible geologic media and more sites within each media type. The Secretary is required to develop criteria for site selections which include such factors as hydrogeophysics, proximity to populations, natural resources and seismic factors.

Excavation, construction and other activities at each site are required to be carried out consistent with the Nuclear Regulatory Commission's site characterization program guidelines.

The Secretary is permitted to conduct such tests at the site as are determined, with the concurrence of the Commission, to be nec-

essary to validate a license application or to meet the requirements of the National Environmental Policy Act. A limit is put on the amount of high-level radioactive wastes which may be used in any such tests. The tests are not to use amounts of radioactive materials in excess of the curie equivalent of 10 metric tons of spent reactor fuel (roughly half to one-third the spent fuel output for one year of a standard reactor operating at 70 per cent capacity). The Committee excluded criteria for the tests recommended by the Science Committee.

The exclusion of large amounts of waste and detailed test criteria was made in order to assure that waste handling and testing activities neither threaten the integrity of the repository in the early stages of construction, nor encourage the design of facilities or tests in line with criteria which may not be consistent with the standards and criteria for licensing being developed by the Commission and by the Environmental Protection Agency. While adequate space and resources may be available for the conduct of useful research, the Committee notes the importance of guiding the attention and resource of programs at these candidate sites primarily on licensing and NEPA activities to avoid delays in the development of full-scale operating repositories.

REPOSITORY DEVELOPMENT SCHEDULE

Deadlines for agency actions and requirements for review of agency decisions related to repository development are provided in the Committee amendment. The schedule represented by the amendment is as follows:

By 1985—DOE selects four sites potentially suitable for development as licensed high level waste repositories and reports to Congress regarding selection. This selection is declared not to be a major Federal action under NEPA. DOE continues search for new sites for future repositories. Sites are deemed approved for expedited permitting unless Congress passes a resolution of disapproval of a site.

1982-87—For each site selected above, DOE submits to NRC required site characterization plans and waste form proposals. All shaft sinking and testing conducted in consultation with NRC within the Commission's licensing procedural requirements.

March 30, 1988 [1]—DOE submits to President a report nominating a site for license application along with a final EIS on the site and an explanation of how the site was chosen.

April 30, 1988—The President approves or disapproves the nomination by DOE, or may delay decision 60 days. If President disapproves, DOE must submit new recommendation withing one year. President reports to Congress regarding decision.

May 30, 1988—State Board or Indian Tribe may have exercised right to object to approval of repository site. If so, if either House of Congress affirms the objection by resolution with 90 days, the site selection is not approved and another must be nominated.

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[1] The approval system remains available for all repository site nominations through December 31, 1999.

August, 1988—If site is not disapproved, DOE submits license application to NRC.[2] For approved sites, all subsequent Federal permits or judicial challenges are subject to expedited treatment.

August, 1990—NRC reports to Congress on status of construction permit.

August, 1992—NRC must make final decision on construction permit.

Late 1996- —Repository in operation, subject to construction contingencies.

PARTICIPATION BY STATES AND INDIAN TRIBES

States, including territories and protectorates, and Indian tribal governments, are provided with financial assistance and procedural mechanisms for participation in decision-making regarding site selection and development activities. Such assistance and appeal mechanisms are available to governing entities if sites are located within their territories.

AUTHORIZATIONS AND JUDICIAL REVIEW

The Committee amended H.R. 7418 to provided for expedited Federal agency decisions and expedited judicial review of such decisions regarding candidate repository sites. Neither agency nor judicial decisions are limited in scope under the amendment, but permits and court challenges are required to be treated as very high priorities. The Committee notes that repository site development and licensing are expected to be technically cumbersome. Expediting provisions as included in the amendment will be necessary to prevent constant slippage in repository development schedules.

Licensing action by the Nuclear Regulatory Commission is exempted from the expediting language applicable to other Federal agencies. A specific deadline is set, however, by which the Commission must have made a final decision regarding a repository license application, four years after such application is applied for.

INTERIM SPENT FUEL STORAGE

The Committee deleted a program recommended by the Science and Technology Committee which would have required the Department of Energy to provide storage in Department facilities for commercial nuclear spent reactor fuel. The Science Committee recommended the construction within existing Department facilities of dry storage capacity of 1,000 metric tons of spent reactor fuel. The Secretary was required to obtain spent fuel from commercial utilities and store it in the new facilities, which were recommended by the Science Committee, however, to be research and development facilities and therefore exempt from any Commission licensing requirement.

Although dry spent fuel storage is a new and important interim spent fuel management technology, the program recommended by the Science Committee would have initiated Federal intervention in an on-going commercial responsibility of electric utilities which

[2] Expedited permitting provisions for approved sites remain applicable until at least one licensed repository is operating.

possess spent fuel. The question whether Federal facilities should be provided for interim spent fuel management is a highly controversial issue which has been debated by the committees of jurisdiction, this committee and the Committee on Interstate and Foreign Commerce, for more than three years. To date, neither Committee has recommended authorization of such a program Legitimate research should be conducted on dry storage technology, and such research programs are now being funded by Congress in the Department's budget. The program entailed in H.R. 7418 as reported by the Science Committee represented a radical intervention in commercial activities, however, by providing for Federal receipt, storage and management of an amount of spent fuel roughly equivalent to the output of all commercial reactors in the U.S. for more than a year. This activity would have been undertaken without Federal cost recovery for provision of the service and would, therefore, have resulted in a direct Federal subsidy for the commercial nuclear sector without approval of the appropriate Congressional committees. The Interior Committee has voted in the context of H.R. 7418 and is considering in the context of H.R. 6390 that all costs of any Federal waste management programs should be directly recovered from the beneficiaries of those programs.

The Office of Technology Assessment in preliminary reports on a comprehensive waste management study has recommended that the most important development now needed for the implementation of dry storage technology is to obtain licensing of such facilities, at or away from nuclear reactor sites. The committee is considering this issue in the context of H.R. 6390.

Inflationary Impact Statement

In accordance with rule XI, clause (2)(l)(4) of the Rules of the House of Representatives, this legislation is assessed to have a minimal inflationary effect on prices and costs in the operation of the national economy.

Impacts of the national nuclear waste management program which would be enacted by this legislation will be distributed among a great diversity of regions and types of business institutions, and is not likely to particularly affect any single segment of the economy. Resolution of the permanent nuclear waste disposal problem should provide certainty and stability for waste disposal charges levied on electricity consumption.

Committee Cost Estimate and Budget Act Compliance

In accordance with Rule XIII, clause 7(a) of the Rules of the House of Representatives, the committee has made an estimate of the budget authority which would be required to carry out the provisions of H.R. 7418 for the fiscal year beginning on October 1, 1981.

The programs specifically required under this recommendation represent ongoing programs of the Department of Energy, the Nuclear Regulatory Commission and the Environmental Protection Agency expected to be included in the budget requests of these agencies for fiscal year 1981. Certain programs to provide technical or financial assistance to States or Indian tribes may require new

or increased budget authority after fiscal year 1981, when waste repository sites may be officially nominated, triggering a need for new Federal assistance programs. The recommendations should not significantly affect budget projections for fiscal year 1981.

At such time as waste repositories constructed under the Act become operational, and when the Secretary begins to collect fees for such disposal as required under the legislation, such fees will be used to offset the costs of the program to the Federal government which have been incurred under the program.

The analysis of the Congressional Budget Office follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., August 27, 1980.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 7418, the Nuclear Waste Research Development and Demonstration Act of 1980, as ordered reported by the House Committee on Interior and Insular Affairs, August 22, 1980.

The bill establishes procedures for the selection and approval of a federally owned high-level nuclear waste repository. Specifically, the bill directs the Department of Energy (DOE) to prepare site selection criteria by February 1981, to identify four possible repository sites by 1985 and to select a site for development by 1988. Congress may disapprove with a concurrent resolution the final site selection proposed by the President. State participation in the site selection process is also provided by the bill. State review boards are to be established in those states where the initial four sites are identified. The boards are to advise the Secretary of Energy and are to receive federal technical and financial assistance. In addition, the Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC) are required to develop regulations regarding high-level nuclear waste repository licensing.

The Department of Energy is directed to collect a waste disposal fee to cover all directly related costs for the selection, development, and construction of a waste repository. The use of such funds will be subject to annual authorization and appropriations action. The Department is also to study the advisability of imposing a fee on repository users to fund an impact assistance program for communities where repositories are located.

The bill does not authorize the appropriation of funds to carry out the required activities. Existing and planned efforts by DOE, EPA, and NRC are apparently in accordance with the intent of this legislation, and no additional funds are expected to be sought for fiscal year 1981. Site characterization costs by 1985, however, could be significant. Depending on how extensive exploratory drilling and testing activities are and the nature of the sites selected, characterizations could cost up to $125 million per site, or a total of up to $500 million.

Design and construction costs are highly uncertain pending the selection of an actual site and storage method. Preliminary estimates for demonstration facilities, however, suggest that such costs for a full scale facility will be over $200 million. No significant ex-

penditure for design and construction are expected prior to 1985. The cost to provide assistance to the state review boards is projected to total $3 to $6 million after 1985.

While the bill directs DOE to collect a waste disposal fee from users, no receipts are expected before 1985. Department plans regarding this fee are not expected to be developed until more is known about the configuration of the selected site and storage method.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

JAMES BLUM
(For Alice M. Rivlin, Director).

OVERSIGHT STATEMENT

In connection with its responsibilities under the rules of the House, the Committee on Interior and Insular Affairs has conducted hearings on nuclear waste management issues and the development of a national nuclear waste management program. The committee would exercise continued oversight over programs developed pursuant to H.R. 7418 to assure compliance with the requirements of the legislation. No recommendations were transmitted to the committee pursuant to rule X, clause 2(b)(2).

COMMITTEE RECOMMENDATION

The committee recommended, by voice vote, that H.R. 7418, as amended, be enacted.

SECTION-BY-SECTION ANALYSIS OF H.R. 7418

(As ordered reported by the Committee on Interior and Insular Affairs)

Sec. 2 sets out findings and purposes for the Title.

Sec. 3 sets out definitions for the Title.

Sec. 4(a) directs the Secretary of Energy to select four sites for possible development as licensed high-level waste repositories by December 31, 1985. This selection is declared not to be a major Federal action under the National Environmental Policy Act. The Secretary is directed to continue looking for additional sites after this initial selection.

Sec. 4(b) requires the Secretary to develop criteria for selecting sites for consideration for repositories.

Sec. 4(c) requires the Secretary to comply with procedures set out by the Nuclear Regulatory Commission for characterization (studying and testing) of repository sites. Section 103(c)(3) limits the amount of high-level waste which can be used in site characterization activities, and requires that any such waste be removed from sites which are not licensed for operation.

Sec. 4(d) requires the Secretary to select, not later than March 30, 1988, a site from among those characterized to be recommended

for application for licensing for construction and commercial operation as a permanent waste disposal facility. The Secretary is required to provide a report to the President explaining this recommendation. If the site so recommended is disapproved under other sections of this Act, the Secretary is required to provide a report to the President explaining this recommendation. If the site so recommended is disapproved under other sections of this Act, the Secretary is required to propose a new site for license application.

Sec. 5 sets deadlines for agency actions concerning licensing and regulation of high-level waste repositories.

Sec. 5(a)(1) requires the Nuclear Regulatory Commission to promulgate standards and requirements for licensing for high-level waste repositories no later than June 30, 1981.

Sec. 5(a)(2) requires the Administration of the EPA to promulgate general standards for repository licensing by January 31, 1981.

Sec. 5(b) requires the Commission to report to the Congress on the status of the application for repository licensing submitted under section 102 not later than 2 years after the application is received by the Commission.

Sec. 5(c) requires the Commission to make a final decision on the license application submitted under section 202 not later than 4 years after the application is received by the Commission.

Sec. 6 provides criteria for participation in repository development and impact assistance for states affected by repository development.

Sec. 6(a) provides criteria for constitution by States of State Review Boards which would be eligible for authorities and benefits under the Act. Such Boards could be constituted as determined by the State under State law, except that the general public, affected Indian Tribes and affected local governments must be represented, and the Board must hold meetings open to the public at least once every two months. A State Review Board would have authority to represent the State in participating in waste repository development planning, petitioning Congress to block development of waste repositories, and developing requests for impact assistance.

Sec. 6(b) provides that a State Review Board may, by a majority vote of its members, petition the Congress seeking disapproval of the selection of a site within the state for application for licensing for permanent waste disposal facilities.

Sec. 6(c) provides that a Board may request financial, technical or legislative assistance to mitigate impacts of waste repository development.

Sec. 6(d) directs the Secretary to provide funds for the operations of State Review Boards, except that at least 10 percent of the costs of the Board must be provided by the State. Funding for a Board is terminated one year after a repository commences commercial operation in the pertinent state.

Sec. 6(e) recognizes that a Board may participate in proceedings relating to licensing of a waste repository.

Sec. 6(f) requires Federal agencies to provide complete and timely information to State Review Boards, and requires the Secretary to enter into cooperative agreements with States to further cooperation.

Sec. 6(g) directs the Secretary to conduct a study regarding collection of fees from nuclear utitlites to be made available to communities affected by waste repository development.

Sec. 7 provides that Indian tribal governments have the same authorities as State Review Boards and are eligible for the same assistance, except that the Federal government would pay 100 per cent of the costs of the pertinent activities.

Sec. 8 provides for approval or disapproval of repository sites by affected States, the President and the Congress.

Sec. 8(a) provides for Congressional disapproval of sites selected for characterization for possible use as repositories through passage of a concurrent resolution.

Sec. 8(b) provides that the President may approve a repository site for license application, thereby rendering that site eligible for expedited procedures under the Act, unless a State Review Board or Indian Tribal Government submits a petition of disapproval to the Congress. The President may also either delay a decision on the site nomination, or disapprove a nominated site. (If the President were to disapprove a site, the Secretary would be required under Section 102(d) to propose another site for approval within one year.)

Sec. 8(c) provides for Congressional disapproval of nomination of a repository site for license application. The Congress may disapprove the nomination if either House approves a resolution affirming the petition of a State. Such a resolution is provided expedited rules as a highly privileged motion.

Sec. 9 provides expedited judicial review of any agency actions relating to construction and permitting of high-level waste repositories under the Act. The section does not limit the scope of challenges be brought within 60 days of the action complained. Claims must be filed in the U.S. Court of Appeals in the District of Columbia, which has exclusive jurisdiction in the proceeding, and which is required to expedite consideration of any such claims.

Sec. 10 provides for expedited permitting of repositories developed under the Act, except that permits issued by the Commission are not affected by the Section.

Sec. 10(a) requires Federal officers or agencies to grant permits affecting characterization or development of waste repository sites under the Act as soon as practicable, to the extent permitted by applicable law. (No officer or agency is required to issue a grant or permit which would be in violation of applicable law.) The Nuclear Regulatory Commission is exempted from the section.

Sec. 10(b) provides that any permits or other authorizations issued or granted under section 108(a) shall include terms and conditions permitted by law. Permits or authorizations issued or granted under Section 108(a) may subsequently be amended by the relevant officer or agency, except that if an amendment is only permitted and not required by law, and if the change would have the effect of terminating activities at a site provided for under the act, the officer or agency is prohibited from making such changes.

Sec. 11 requires the Secretary to collect fees covering all costs of waste disposal and management from users of Federal waste repositories. Such fees are required to be used directly to offset waste management program costs, but expenditure of the funds by the

Secretary are subject to annual authorizations and appropriations by Congress.

Sec. 12 clarifies that nothing in this Act should be construed to affect provisions of Public Law 96-205 which prohibit licensing of any nuclear waste disposal or storage facilities in certain U.S. territories without Congressional authorization.

Sec. 13 requires the Secretary to design and construct facilities for permanent disposal of high-level waste in a manner which provides that for an appropriate period of time the wastes placed in such facility will be retrievable for reasons of safety or for recovery of the material for economic purposes. The Secretary is prohibited from disposing of spent fuel in an irretrievable manner unless expressly authorized to do so by the President.

Sec. 14 sets dates at which parts of the subtitle will cease to have effect.

Sec. 14(a) provides that sections 107 and 108, which provide expedited permitting and judicial review for high-level waste repository development, will terminate as soon as at least one licensed repository is in commercial operation.

Sec. 14(b) provides that all the provisions of the title except for sections 107 and 108, which are addressed in section 209(a), will terminate December 31, 1999.

Changes in Existing Law Made by the Bill, As Reported

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is pritned in italics, existing law in which no change is proposed is shown in roman):

SECTION 111 OF THE ENERGY REORGANIZATION ACT OF 1974

PROVISIONS APPLICABLE TO ANNUAL AUTHORIZATION ACTS

Sec. 111. (a) * * *

* * * * * * *

(h) When so specified in appropriation Acts, any moneys received by the Administration may be retained and used for operating expenses, and may remain available until expended, notwithstanding the provisions of section 3617 of the Revised Statutes (31 U.S.C. 484); except that—

(1) this subsection shall not apply with respect to sums received from disposal of property under the Atomic Energy Community Act of 1955 or the Strategic and Critical Materials Stockpiling Act, as amended, or with respect to fees received for tests or investigations under the Act of May 16, 1910, as amended (42 U.S.C. 2301; 50 U.S.C. 98h; 30 U.S.C. 7); [and]

(2) revenues received by the Administration from the enrichment of uranium shall (when so specified) be retained and used for the specific purpose of offsetting costs incurred by the Administration in providing uranimum enrichment service activities[.]; *and*

(3) revenues received by the Secretary of Energy under section 11(a) of the Nuclear Waste Disposal Act shall, when so specified in appropriation Acts, be retained and used for the specific purpose of offsetting costs incurred by the Secretary in providing for the disposal, interim storage, and management of nuclear wastes and spent fuel.

○